

DIVISION OF COMPLIANCE AND CONSUMER AFFAIRS RESPONSE



Federal Deposit Insurance Corporation

550 17th Street, NW, Washington, DC 20429

Division of Compliance and Consumer Affairs

January 12, 1999

TO: David H. Loewenstein
Assistant Inspector General

FROM: Steven D. Fritts
Associate Director

SUBJECT: Draft Audit Report – *Material Loss Review –
The Failure of BestBank, Boulder, Colorado*

In a memorandum dated December 11, 1998, you state that the Office of Inspector General is providing DCA with a draft report pertaining to the major causes that contributed to the failure of BestBank, Boulder, Colorado for our review and comment. You asked that any comments be forwarded to your office by January 5, 1999. After Jim Deveney and Calvin Troup met with Michael Lombardi and his staff on January 5, 1999, it was agreed we would respond to the revised consumer complaint section of this report. These comments are DCA's response to the revised section of the report, which was received by DCA in the late afternoon of January 7, 1999.

In the revised section of the draft report, you included a section entitled, Consumer Complaints Related to BestBank were not Routinely Reviewed by DOS Examiners. The purpose of this memorandum is to respond to the comments contained in this section of the report.

The Truth In Lending Act establishes procedures for handling billing errors identified on a customer's periodic statement. The regulation also requires the bank to maintain evidence of compliance for two years after the date disclosures are required. As required by the examination procedures outlined in the compliance manual, DCA examiners should review the institutions billing error resolution procedures and any billing error complaints received by the institution. The five complaints pertaining to the \$20 credits on the periodic statements would have been included in this review.

The documentation request lists provided to institutions prior to the start of the examination instruct the institution to provide the examiners with copies of any consumer or civil rights complaints it has received and management's response/resolution of the complaint. The initial examination procedures outlined in the compliance manual require examiners to review copies of all consumer complaints filed against the institution since the previous examination to ensure that the institution has complied with all applicable consumer protection and civil rights laws and regulations. The procedures also reflect that the examiner should contact the Consumer Affairs staff in the Regional Office to ensure access to all complaints. The FDICs correspondence files, which are maintained at the Regional and Field Offices, will include all complaints received by DCA. Additionally, complaints received by other regulatory agencies are usually forwarded to the bank's primary regulator for review and inclusion in its correspondence files. As for complaints received directly by the institution, there is no requirement that these complaints be

forwarded to the regulatory agencies, until the start of the next compliance examination when the institution receives the FDIC compliance documentation request list.

Therefore, it is again noted that if the bank failed to provide the examiners with this documentation, which appears to be the case in the BestBank issue, then the examiners would not be fully aware of the volume and nature of the complaints filed against the institution.

It should also be noted that consumers have a variety of agencies to which they can forward a complaint, such as the FDIC, Federal Trade Commission, Department of Housing and Urban Development, Department of Justice, Congress, and Better Business Bureau. As indicated above, our examination procedures require examiners to review the FDIC's internal records and the bank's complaint file, if it has established one. We do not, however, believe that it is practical to require examiners to expand their review to include files maintained by other agencies.

The FDIC's safety and soundness staff and compliance and enforcement staff have always worked very closely together, sharing information on an informal basis. Safety and soundness staff would share compliance related information with the compliance staff, and the compliance staff would share safety and soundness related information with the safety and soundness staff. This spirit of information sharing and cooperation will continue in the future.